



Be Neutral

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From the Director: What We've Got Here is Failure to Communicate

Alex Kozinski is my new favorite judge.

A few weeks ago, I heard Judge Kozinski, chief judge of the U.S. Court of Appeals for the 9th Circuit, address a packed house of lawyers and law students at Georgia State University College of Law. The stated point of his speech was that images and props are often more powerful than words during oral argument. However, the subtext of his speech was closer to my heart: that litigation is a mistake in most cases that can lead to unexpected consequences, and that genuine communication can prevent and defuse lawsuits.

Judge Kozinski's court comprises the largest federal appellate circuit in the country. Because it covers the West Coast, home to Silicon Valley and Hollywood, the 9th Circuit hears many intellectual property, trademark and patent infringement cases. So Judge Kozinski drew from such cases to make his points.

United States v. Adams, 383 U.S. 39 (1966): Adams patented a revolutionary battery. He showed it to the Army and Navy, which dismissed the device to his face, but then had the battery built in huge numbers without Adams's knowledge or permission. The new battery was widely used in military hardware and was a huge asset during the war. When Adams learned that the military had hijacked his invention, he sued the government for patent infringement and won in the Supreme Court. According to Judge Kozinski, Adams was not seeking fame or fortune. He wanted respect, and he was angry and hurt that the military did not thank him or even acknowledge his pivotal role in the war effort. An apology for stealing his invention and some sincere words of gratitude from the government probably would have satisfied Adams, Kozinski said. Instead, he and the government had to waste precious time and money fighting all the way to the highest court in the land.

Fisher v. Dees, 794 F.2d 432 (9th Cir. 1986): Disc jockey Rick Dees wanted to record a parody of the Johnny Mathis performance of "When Sunny Gets Blue," so he asked the copyright holder, Marvin Fisher, for permission. Fisher denied Dees permission, but Dees nonetheless recorded and released the parody – a 29-second ditty named "When Sonny Sniffs Glue." Fisher, feeling insulted and disrespected, sued Dees for copyright infringement. Fisher lost at trial and on appeal, the courts finding that Dees's use of the song fragment was clearly a parody of Mathis's singing style and therefore not an infringement on Fisher's copyright. Judge Kozinski said that here, too, a civil conversation between the parties and an apology from Dees to Fisher probably would have resolved the matter.

Mattel v. MCA Records, 296 F.3d 894 (9th Cir. 2002): In 1997, the little-known music group Aqua recorded a little-noticed song called "Barbie Girl," released on MCA Records. Mattel, maker of the Barbie doll, sued MCA Records for trademark infringement, alleging – apparently without irony – that the song turned Barbie into a sex object. Mattel's case was dismissed at trial, and the dismissal was upheld on appeal by Judge Kozinski himself, who found the song to be a parody and famously concluded his opinion with the admonition, "The parties are advised to chill." Of course, Mattel's suing MCA Records generated more publicity for the band and the song – and more opportunities for Barbie to be recast as a sex object – than if Mattel had just ignored the whole issue. Ironically, Mattel itself later used the "Barbie Girl" song in several Barbie doll commercials. Judge Kozinski's points: the lawsuit created unforeseen negative consequences for Mattel, and was a wasted opportunity for Mattel and MCA to collaborate from the very beginning on a mutually beneficial publicity plan.

Louis Vuitton v. Plesner (2011): In 2011, Danish artist Nadia Plesner, who wanted to call attention to the atrocities in the Somalian civil war, created a t-shirt bearing the image of an emaciated boy holding a Louis Vuitton handbag decorated in its signature multi-colored repeat pattern. LV sued Plesner in a European court for copyright infringement, demanding thousands



of Euros in penalties for each day the image appeared on Plesner's website. The court in The Hague ruled that Plesner's right to freedom of expression outweighed LV's right to protect its brand and ordered LV to pay the Plesner's legal fees. Judge Kozinski's points: LV lost in court and in the court of public opinion. Instead of suing, the luxury brand could have collaborated with the artist on a campaign that would have brought good will to the brand and aided Plesner in her goal to highlight the Somalian tragedy.

Through these and other examples, Judge Kozinski argued that lawsuits are often unnecessary and messy, doing more harm than good and producing unanticipated results. (He referred to the "Streisand effect," the phenomenon in which attempts to suppress information result in more disclosure of that information, named after Babs's spectacularly abortive legal attempts to keep photos of her beachfront residence off the Internet.) Lawsuits often are the result of failures of communication, of the dominance of litigation warriors over thoughtful advisors, he said. More lawyers should counsel their clients to invest their energy and money in processes such as mediation that allow parties to talk to each other, take control of their disagreements, and to tailor resolutions that are not only mutually beneficial, but predictable as well. Lawsuits should be the last resort, he said, not the first resort.

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2012 ADR Institute December 14 Registration Opens!



The 19th Annual ADR Institute and 2012 Neutrals' Conference will be held Friday, December 14, 2012, at the State Bar of Georgia Conference Center in Atlanta. For the first time, the Institute will be broadcast live to the State Bar of Georgia offices in Savannah and Tifton. This year's conference will once again present an agenda of engaging local and national presenters on a broad variety of topics in the ADR field. At least 6 hours of CE and 6 hours of CLE will be available. Conference fees were held to last year's levels. A student rate – half of the attorneys' early registration rate – is available again upon request, whether registering early or on site. Register now at:

<http://www.iclega.org/programs/8114.html>

On-time Renewal Season Runs November 1-December 31

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The 2012 registration renewal season will begin November 1, with an on-time renewal deadline of December 31, 2012. Any renewal applications submitted after December 31, 2012, will be considered late, and late fees will apply. The late renewal deadline is April 30, 2013. Neutrals who do not renew by that date will be considered inactive. All neutrals will need to renew, except those with a registration expiration date of 1/1/2014. Check your information by logging into your neutral account. Find login instructions [here](#).

Just as last year, only online renewals will be accepted in order to streamline the renewal process. Online renewals should take most neutrals 5-10 minutes to complete.

Renewal Applications: Online renewal access will be available through your personal online. The online renewal application is already populated with your personal information, so most of you will need only to enter your continuing education information before proceeding to payment. Find login instructions [here](#).

Renewal Fee: The basic renewal fee is \$125; it is \$150 for those registered in domestic relations mediation. **Note:** if you submit your application online after December 31, 2012, it will be considered late, and your renewal fee will double to \$250 ~ \$300. We don't want you to have to pay the late fee, so please submit your online application before December 31, 2012.

You will have the choice of paying your renewal fee with a credit card through PayPal or by

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submitting a check. **You do not need to have or create a PayPal account to use the PayPal function.**

Note: If you are a volunteer neutral – that is, you receive **no** compensation, no matter how small, providing ADR services within or outside a court program – you and your court-connection program director can submit a sworn affidavit with your renewal application to have your fee waived this renewal season. **To be considered a volunteer, you must have provided ADR services to a Georgia court program in the past year.** [2012 volunteer affidavits](#) are available under [“Forms and Applications.”](#)

Continuing Education Requirements: All renewing neutrals must submit 3 hours of continuing education that they have taken in 2012. You cannot carry over CE hours from previous years or toward future years. **CLE and CJE qualify as neutral CE as long as they were earned and not carried over.** See the [“Help! I Need CE!”](#) link for information on all the ways you can earn CE credit.

Online Renewal Instructions: Renewing **online is fast and easy because most of your personal information is already filled in online.** All registered neutrals have an online neutral account created automatically for them. If you have never logged in to your online account, **you must activate your account before using it the first time.** Please see how to activate your existing neutral account by going to [“Neutral Account Login Help”](#) link. Then proceed as directed below.

To renew online, click on [“Login To Your Neutral Account”](#) at the top of the web page. The login page will appear in a new browser window. Enter your login ID and password. **Your login ID is the first four letters of your last name and the last four digits of your SSN (i.e. smit1234).** If your old password does not seem to work, try “password” (without quotation marks). If you have forgotten your personalized password, choose the “Forgot Password” function on the main login screen. After you are logged in, select “Renew Registration” in the menu. Follow the prompts and instructions carefully. Once you fill out and submit your online renewal form:

A summary of your online renewal form will be created in your browser. Please print a copy for your records;

If you paid through PayPal, please print a receipt of your PayPal renewal fee payment for your records.

Background Check Authorization: If you’ve already submitted your “permanent” authorization form, you don’t have to send us again. If you haven’t submitted your permanent authorization, please download, sign and send us the [form](#), under [“Forms and Applications.”](#) Scan and e-mail, fax or mail us the signed form. **Your application will not be processed without a signed authorization form. Mail, e-mail, or fax your signed form to us.**

Lawful Presence Affidavit and ID: The lawful presence affidavit and supporting ID are required again this year.

even if you submitted them with your last application. The General Assembly did not amend the Illegal Immigration Reform and Enforcement Act of 2011 (O.C.G.A. § 50-36-1(e)), during the 2012 session. That means that all renewing neutrals will once again have to submit documentation that they are in the U.S. legally.

Therefore, as of January 1, 2012, before your registration can be issued, renewed or reinstated you are required to:

1. **Execute a signed and sworn affidavit verifying your lawful presence in the United States.** The affidavit to use for this purpose can be found at the GODR website under “Forms and Applications” or directly at this link:

<http://www.godr.org/files/GODR%20Lawful%20Presence%20Affidavit.pdf>

2. **Include with the affidavit a copy of a secure and verifiable document issued to you by a state or federal jurisdiction or recognized by the United States government and that is verifiable by federal or state law enforcement, intelligence, or homeland security agencies.** A complete listing of acceptable secure and verifiable documents, as determined by the Office of the Attorney General, Georgia, can be found at the Attorney General’s website under “Key Issues,” then “Immigration Reports,” or directly at this link:

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<http://law.ga.gov/documents/list-secure-and-verifiable-documents-0>

Registration Benefits: In addition to a professional credential issued by the Georgia Supreme Court, your registration as a neutral entitles you to several other exclusive benefits that can save you money, time and aggravation. These include [group-rate professional liability insurance for neutrals](#); [group and individual health, vision, and dental insurance, retirement products, and more](#). You will also continue to receive our new monthly e-newsletter, which is designed to enhance your knowledge and practice as a neutral. We are working to create more value-added programs for neutrals, courts and trainers.

Some Tips: If you are mailing us important information, first make copies and file them, then send the material via a service that provides tracking and delivery confirmation. If you are faxing us important information, keep the fax transmittal confirmation. If you are e-mailing us important information, request a return receipt when your message is delivered or read (many e-mail programs allow this) and save it. Or save our responses to your e-mails.

For More Information: Please contact us at gaodr@godr.org or 404-463-3788 if you have further questions about the renewal process.

2012 Renewal Season Key Dates

Application Submitted November 1-December 31, 2012: On-time renewal, fees \$125 (non-domestic), \$150 (domestic), 3 CE hours required.

Application Submitted January 1-April 30, 2013: Late renewal application required, fees double to \$250 (non-domestic), \$300 (domestic), neutral in "lapsed" status until renewed, can still handle court-connected cases through April 30, 2013.

Application Received/Post-Marked May 1, 2013, and later: Reinstatement application required, fees double to **\$250** (non-domestic), **\$300** (domestic), 8 hours of CE required, neutral in "inactive" status until reinstated, **cannot** handle court-connected cases starting May 1, 2013.

Alert: Renewing neutrals will have an opportunity to give us feedback on the registration renewal process and on their contacts with our office. Please look for the link to the online survey in the e-mail confirming that your registration has been renewed. If you can spare a moment, please take the survey and tell us your thoughts. Thank you!

****Always send important documents to GODR via a service that offers tracking and delivery confirmation.****



Ethics Opinion 5 Published

The Commission's latest ethics opinion, [Ethics Opinion 5](#), has just been posted on the GODR website under ["What's New"](#) and under ["Mediator Ethics Information."](#) Ethics opinions are based on actual issues brought before the Commission's Ethics Committee, and they are posted to serve as educational opportunities for registered neutrals.



CaseWatch for Mediators: Clear and Complete Agreements Can Save Parties Years of Headaches

Courts hate repeat customers. Having parties come back to court to argue over issues that should have been resolved on their first visit is wasteful in time, money and resources for everyone involved. That's why mediators must be so careful to draft agreements with completeness and clarity. In this month's CaseWatch for Mediators, Mary Ellen Cates, Esq., divorce attorney and registered mediator, discussed a divorce case in which the settlement agreement's ambiguities created big hassles for the parties years after their divorce.

[Read Full Article](#)



CaseWatch for Arbitrators: \$5 Million Award Vacated Over Arbitrator's Failure to Disclose Conflicts

It should be a no-brainer that neutrals should be, well, neutral. Sometimes arbitrators forget that, and when they do, it can make a big mess. In this CaseWatch for Arbitrators, John Allgood, Esq., veteran attorney, registered mediator and arbitrator, discusses the latest example of what happens when an arbitrator doesn't tell the parties about potential conflicts of interest he may have.

[Read Full Article](#)



Marketing Tip: Do You Know Who You are Marketing to?

Spending big time and money on marketing is just an expensive waste of time if you don't target your efforts efficiently. Do you know what your niche market is? Do you really know to whom you should be marketing? Do you know where your referrals come from? Do you know all the markets that you should tap? In this month's Marketing Tip, master marketer and mediator Michele Gibson shows you how to design your marketing plan to get a steady flow of business coming your way.

[Read Full Article](#)

GODR MEMBER BENEFIT SPOTLIGHT – DISABILITY INSURANCE

As a Georgia Registered Neutral, you may qualify for discounts for disability insurance. You may also be eligible for our member group Long Term Disability insurance plan.



Our Member Group Disability program has been a popular program for professionals since its launch in 1987. Over the years, the group plan has experienced steady growth enabling us to make improvements to the plan over time. We are happy to announce recent enhancements, including:

- ▶ New lower group plan rates.
- ▶ Higher available disability benefit amounts, up 10,000/month.
- ▶ New Optional Benefits - add COLA and Critical Disability Supplement to your plan.
- ▶ Easy online eApplication.
- ▶ Group plan not available to all occupations.

This plan works great as primary coverage or in addition to other coverage that you might have (income and benefit limitations still apply). If you haven't reviewed your disability coverage needs in some time, now is a good time to give us a call.

[Get a quote for Disability insurance >](#)

¹ Social Security Administration, Fact Sheet March 18, 2011

² Council for Disability Awareness (www.disabilitycanhappen.org)

If links in this email are not working, please visit <http://www.memberbenefits.com/godr>

Products sold and serviced by BPC Financial, the administrator of the Georgia Office of Dispute Resolution (GODR) Insurance Programs. GODR is not a licensed insurance entity and does not sell insurance.



Publicly Available Resources for Georgia ADR Professionals

We encourage you to visit the [blog](#) created by Georgia State University law professor Doug Yarn and GSU law students Alex Salzillo and Alicia Mack to inform and encourage discussion. Please add it to your reading list, send the link to your colleagues, and visit often. The address: <http://georgiaadr.wordpress.com/>

Georgia



Mediators Network

And don't forget the [Georgia Mediators Network](#), a great Facebook resource for the latest mediation news and articles from around the world. The page has been visited tens of thousands of times in just the few short months it's been around. Use the information there to pump your own professional web pages and your expertise. The Georgia Mediators Network is the brainchild of registered mediator Michele Gibson, our marketing columnist and newsletter producer.

Benefits: Exclusive Insurance Products for Registered Neutrals



Georgia-registered neutrals are entitled to participate in several insurance and retirement programs that have been designed specifically for them. If you need insurance, are planning for retirement, talk to the experts at [BPC Financial](#). They manage our new exclusive insurance and retirement program, and they can advise you on your insurance needs and help you find good deals on major medical insurance, healthcare savings accounts, dental and vision insurance, term life insurance and more. Registered neutrals receive the benefits of underwriting concessions, enhanced benefits, or reduced premiums and fees compared to shopping for similar products on the open market. Check out the [GODR Registered Neutrals Insurance and Retirement Programs website](#).

We've also arranged for special benefits on professional liability insurance for registered mediators and arbitrators with [Complete Equity Markets](#). See our [website](#) for more information or contact [Betsy Thomas](#), 800-323-6234, ext. 472, and tell her you're a Georgia registered neutral!

Upcoming CE and Training Offerings



Renewal season is right around the corner, and everyone needs 3 hours of CE to renew. Check our [website](#) for the latest CE and training offerings. Remember, any ADR-related training you take counts as CE as long as you took it since your last renewal or your initial registration, whichever comes later. Lawyers, any CLE you took during that same time period counts as CE. Likewise, judges and CJE. Accountants and other professionals with CE requirements, same thing.

And remember, we have posted three videos on our website that registered neutrals can watch for free to earn CE credit. Each video is one-hour long. Neutrals are free to watch the videos as many times as they wish, but we can only award 1 CE hour credit for each video once a renewal season. Please note the date you finished viewing each video so you can report it on your renewal form. Look for the link, "[Continuing Education Videos](#)," in the main menu of our website. For more information on what qualifies for CE, please see the "[Help! I Need CE!](#)" link on our website.

Be Neutral Back Issues Available Online



Be Neutral is sent monthly to all registered neutrals, generally at the beginning of the month. If you missed an issue, our back issues are posted at the bottom right of our website, under "[Newsletter Archive](#)." Please take a look. If you know people who want *Be Neutral*, please direct them to our subscription box at the bottom right of our [website](#), where they just need to enter their e-mail addresses. Please forward this newsletter to anyone who might be interested in ADR in Georgia courts. Forward it just as you would any other e-mail. If folks who are not registered neutrals want to receive the newsletter free of charge, they can submit their e-mail addresses in the subscription box at the bottom right of our [website](#). And sending us feedback is easy – just reply to this e-mail as you would any other e-mail. We want to hear from you!

Spread the Word

Please forward this newsletter to anyone who might be interested in ADR in Georgia courts. Forward it just as you would any other e-mail. If folks who are not registered neutrals want to receive the newsletter free of charge, they can use the subscription box at below this text or submit their e-mail addresses in the subscription box at the bottom right of the home page of our [website](#). And sending us feedback is easy – just reply to this e-mail as you would any other e-mail. We want to hear from you!

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